

## N.J. EMPLOYERS NO LONGER ABLE TO SHRINK LAWSUIT TIME LIMITS

Supreme Court Hands Loss To Employers – But Is There A Hidden Silver Lining?

Insights

Jun 16, 2016

The New Jersey Supreme Court just ruled that employers are not permitted to shorten the time frame that workers have to file a discrimination claim under the New Jersey Law Against Discrimination (NJLAD), reversing a 2014 appellate victory. The decision means that employers will want to revise their applications and other agreements to eliminate any offending language that otherwise shortens the two-year statute of limitations. However, employers may find some small measure of solace in the decision, as it may actually work to reduce the number of lawsuits filed against you (*Rodriguez v. Raymours Furniture Co. Inc.*).

### Case Background: Workplace Injury Leads To Legal Trouble

In August 2007, Sergio Rodriguez applied for a job with the retail store Raymour & Flanigan, a 110-store furniture chain located in the Northeast. He was hired to work in the Customer Service Center in Monmouth Junction, N.J., and eventually transferred to a similar position in Randolph, N.J. In April 2010, after working for the company for several years, he sustained a knee injury that required surgery and took a several-month absence from work before returning in September 2010.

Two days after returning from his absence, Raymour terminated his employment. The employer explained that the layoff was part of a company-wide reduction in force, but Rodriguez believed that others with less seniority were spared termination. In July 2011, nearly seven months after his termination, Rodriguez filed a disability discrimination

### Related People



**Rosemary S. Gousman**

Partner

908.516.1060



**Richard R. Meneghello**

Chief Content Officer

503.205.8044

and workers' compensation retaliation lawsuit against Raymour under the NJLAD. He assumed that the lawsuit was timely.

Although the NJLAD has a two-year statute of limitations, Rodriguez agreed to a shrunken timeframe in the job application he filled out several years earlier. In big, bold, oversized, all-caps letters, the application contained a provision above his signature stating that he agreed **"that any claim or lawsuit relating to my service with Raymour & Flanigan must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit,"** and that **"I waive any statute of limitations to the contrary."**

Because of that language, the trial court dismissed Rodriguez's lawsuit, and in June 2014 the Superior Court of New Jersey's Appellate Division upheld the dismissal. The courts were swayed by the fact that there was absolutely no ambiguity in the application language, and that the waiver was not buried but instead written in a very conspicuous manner. "The terminology was clear and uncomplicated," wrote the appeals court. In addition, six months was consistent with the time limit to bring a claim with the New Jersey Division on Civil Rights.

Rodriguez was undaunted, however, and requested that the New Jersey Supreme Court hear his case and overturn the dismissal. In a unanimous opinion issued yesterday, June 15, 2016, the Supreme Court did just that, ruling that employers could not shrink the NJLAD's lawsuit timeframe.

Here are three things to know about the decision:

### **1. Employers Should Change Applications And Agreements**

If your standard application materials or other personnel documents include any sort of restriction on the time your workers have to file NJLAD claims against you, those materials should be amended to remove that language. The Supreme Court could not have been clearer: such limitations are not enforceable.

The court ruled that these constraints ran contrary to the public-interest purpose of the NJLAD, designed to eradicate discrimination from New Jersey workplaces. The court noted that two other states that have ruled on similar limitations have also agreed that they contravene public policy: Kansas (2013) and California (2014). No matter how

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clear or unambiguous the language might be, it will not pass muster in New Jersey any longer.

Recent legislation conditionally vetoed by Governor Christie makes it an unlawful employment practice for an employer to shorten the limitations period. Employers should no longer require applicants or employees to sign applications or other personnel documents that shorten the statute of limitations under the NJLAD.

## **2. You Can Still Maintain Arbitration Agreements**

The Supreme Court opinion confirms that agreements between employers and employees to defer NJLAD claims to arbitration or some other form of alternative dispute resolution remain legally sound, despite this ruling. They need to be substantively and procedurally appropriate, however, to be considered enforceable. For example, the agreement cannot be contained in a handbook that includes a disclaimer stating that it was not “promissory or contractual.”

If you are unsure whether your arbitration agreement passes muster under current New Jersey law, check with your labor and employment counsel.

## **3. Silver Lining: Fewer Lawsuits?**

If there is any silver lining to be found in this decision, it is that two-year statutes of limitation could work to reduce the number of costly and public lawsuits filed against your business. As the Supreme Court pointed out, shortened time periods could compel attorneys to file premature NJLAD claims, feeling as if they had no choice but to preserve their right to file suit before effectively investigating the claim or negotiating a possible resolution.

By permitting all plaintiffs a full two years to contemplate whether to pursue actions, this decision could work towards encouraging mutually beneficial resolutions before the case heads to court. In a best case scenario, by allowing sufficient time for a thorough investigation, a potential plaintiff may even learn that the claim lacks merit and will be discouraged from pursuing it any further.

Another reason the Supreme Court rejected shrunken time periods is because they interfered with the ability of the Division of Civil Rights (DCR) to effectively investigate, prosecute, and possibly settle discrimination claims through

alternative dispute resolution procedures. "The DCR remedy must remain accessible and vibrant," said the court.

This decision bolsters the agency's role in the process, allowing sufficient time for its investigators to examine each case carefully while ensuring that aggrieved employees do not feel compelled to withdraw their claims from the DCR in order to beat a shortened window of time created by the employer.

If you have any questions about this decision or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our New Jersey office at 908.516.1050.

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*This Legal Alert provides an overview of a specific New Jersey court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*